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# Impact of Proposition 47 On State Corrections

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LEGISLATIVE ANALYST'S OFFICE

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Assembly Budget Subcommittee No. 5 on Public Safety  
Hon. Reginald B. Jones-Sawyer, Sr. Chair





## How Will Proposition 47 Affect State Corrections?

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- Reduces Penalties.*** Proposition 47, which was approved by voters in November 2014, reduces penalties for certain offenders convicted of nonserious and non-violent property and drug crimes. The measure also allows certain offenders currently serving sentences for such crimes to request that the courts resentence them to lesser terms.
  
- Reduces Prison Population.*** These changes will reduce the state prison population and associated costs by (1) making fewer offenders eligible for prison and (2) reducing the terms of the inmates resented by the courts.
  
- Temporarily Increases Parole Population.*** The measure will also result in a slight temporary increase in the parole population because offenders who are resented under the measure will be placed on state parole supervision for one year, unless a judge waives that requirement.



## Impact on Meeting Court-Ordered Population Cap

<b>Court-Ordered Prison Population Cap</b>			
	<b>Design Capacity<sup>a</sup> of CDCR Prisons</b>	<b>Population Cap (Percent of Design Capacity)</b>	<b>Inmates Allowed In CDCR Prisons</b>
June 30, 2014 through February 27, 2015	82,707	143 percent	118,271
February 28, 2015 through February 27, 2016	82,707	141.5 percent	117,030
After February 27, 2016	85,082 <sup>b</sup>	137.5 percent	116,988

<sup>a</sup> Design capacity generally refers to the number of beds CDCR would operate if it housed only one inmate per cell. Inmates housed in contract facilities are not counted toward the overcrowding limit.

<sup>b</sup> Assumes that three infill facilities will be activated in February 2016 and that the court will immediately count the full design capacity of 2,376.

- Population Cap.** In recent years, the state has been under a federal court order to reduce overcrowding in the prisons operated by the California Department of Corrections and Rehabilitation (CDCR) by keeping the number of inmates housed in these prisons below the court-ordered population caps shown in the figure.
- CDCR Maintains “Buffer” Against Cap.** To ensure that the prison population does not exceed the cap, CDCR has reduced the population below the cap by thousands of inmates. This gap between the number of inmates CDCR is allowed to house in its 34 prisons and the number it actually houses acts as a buffer against the cap. Between June 2014 and November 2014, CDCR maintained an average buffer of about 2,000 inmates and at no point came within 1,000 inmates of the population cap.
- State Currently in Compliance.** As of February 25, 2015, the inmate population in the state’s prisons was about 112,500, or 4,600 inmates below the February 28, 2015 cap, and 1,300 inmates below the final February 2016 cap.



## Governor's Proposal

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### **Reduces CDCR's Budget by \$12.7 Million Due to Proposition 47**

- The Governor's budget assumes a reduction of 1,900 inmates housed in the state's prisons and an increase of 900 parolees in 2015-16 due to the implementation of Proposition 47.
- In total, the budget proposes a net \$12.7 million reduction to CDCR's budget for 2015-16 to account for Proposition 47.



### **Plans for Complying With Court-Ordered Population Cap**

- ***Compliance Projected.*** Due in part to the above inmate reduction, the Governor's budget projects that the state will maintain compliance with the court-ordered population cap throughout 2015-16. The state's ability to comply with the cap also depends on (1) the number of contract beds maintained by CDCR and (2) the design capacity of the state's 34 prisons.
- ***Slight Increase in Contract Beds.*** The Governor's budget includes \$495 million (General Fund) to maintain about 15,900 contract beds in 2015-16. This represents a slight increase (about 4 percent) from the revised current-year funding. Inmates housed in contract beds are not counted towards the population cap.
- ***Activation of New Infill Beds.*** The Governor's budget also includes \$36 million (General Fund) to activate three new infill bed facilities that are under construction. These facilities will add almost 2,400 beds to CDCR's 34 prisons. Because the state will be allowed to overcrowd to 137.5 percent of design capacity, the activation of these facilities will allow the state to add about 3,300 inmates to its prisons. The budget assumes that all three facilities will be activated in February 2016.



## Administration Indicates its Compliance Plan Accounts for Uncertainty

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### Population Projections Subject to Unusually High Degree of Uncertainty

- According to the administration, this year's projections are particularly uncertain due to the challenge of estimating the effects of Proposition 47 and other court-ordered population reduction measures. Due in part to this, CDCR has decided not to publish its estimate of the inmate population beyond 2015-16 as it normally would.

### Timing of Activation of New Prison Facilities Is Uncertain

- The department plans to admit inmates into the new infill facilities in waves beginning in February 2016 and expects to reach full occupancy by July 2016. However, the administration indicates that construction crews could encounter unanticipated difficulties (such as poor weather) that could result in delayed activation.

### Future Court Decision Will Affect Population Cap

- There is some uncertainty regarding how the federal court will count the additional infill capacity for the purpose of calculating the number of inmates the state can house in its 34 prisons.
- If the court counts the entire design capacity of the facilities immediately upon activation—irrespective of the number of inmates actually housed there—the population cap would increase by about 3,300 immediately. Alternatively, the court could determine that the facilities must be fully occupied before it counts the full design capacity. This would mean the population cap would remain thousands of inmates lower in the months in which the facilities are being filled.
- The court has required the state to meet with the plaintiff's attorneys in the case and attempt to reach an agreement regarding how the court should count new capacity.



## Proposed Contract Bed Funding Higher Than Necessary

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- The Governor’s budget provides at least \$20 million more than necessary for contract beds in 2015-16. The amount could be even greater depending on whether the infill facilities are activated on time and how the court counts the new capacity.
- Proposed Number of Contract Beds Would Result in Excessive Buffer**

  - The department is planning to maintain a buffer of several thousand inmates in 2015-16 by housing these inmates in contract beds rather than in the state’s 34 prisons.
  - Because contract beds are typically more expensive than already constructed prison beds, the state could achieve savings by maintaining a smaller buffer without meaningfully increasing the risk of violating the cap. For example, if the department maintained a buffer in 2015-16 of about 2,500 beds—similar to the first several months of 2014-15—it could achieve tens of millions of dollars in savings.
- Operational Savings Could Offset Contract Bed Costs if Infill Delayed**

  - If the activation of the infill facilities is delayed, some or all of the proposed \$36 million to support their activation would not be needed. The operational saving could easily reach into the tens of millions of dollars.
  - A delay would likely require the department to maintain the proposed level of contract beds during the last several months of 2015-16. However, the savings from the delayed activation could be used to partly offset the cost of any contract beds needed.



## Proposed Contract Bed Funding Higher Than Necessary

*(Continued)*

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### **Population Estimates Appear High**

- The administration may be underestimating the population reductions from Proposition 47 because it made very cautious assumptions about its effects. If the inmate population is lower than projected, the excess contract bed funding could be even greater than described above.



## Lack of Long-Term Population Projections Makes Planning Difficult

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- ☑ In the long term, the Legislature may have a variety of options to achieve savings by reducing prison capacity as the inmate population declines. For example, it could consider permanently reducing contract beds or even closing a state prison.
- ☑ The appropriate course of action, and any necessary planning to achieve it, depends heavily on the estimated prison population in future years. As such, it is impossible for the Legislature to make an informed decision without the long-term population projections that the department has declined to provide this year.





## LAO Recommendations

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### **Withhold Contract Bed Funding Pending Additional Justification**

- We find that the Legislature could reduce the Governor's proposed contract bed funding level by at least \$20 million by directing CDCR to move inmates from contract beds into state prisons.
- The amount of savings could exceed \$20 million depending on (1) the timing of the activation of the infill beds, (2) how the court counts the infill capacity, and (3) how the actual inmate population level compares to the administration's projections.
- As such, we recommend that the Legislature not approve the proposed contract bed funding until the department can provide information on (1) how the population projections for the current year compare with actual population levels, (2) whether the infill facilities are on track to be activated on schedule, and (3) the status of negotiations with plaintiffs on how the court will count the new capacity.



### **Direct CDCR to Provide Long-Term Population Projections**

- We recommend that the Legislature direct CDCR to resume its historical practice of providing long-term population projections biannually. This information would allow the Legislature to better assess and plan for the long-term implications of Proposition 47 and determine how best to adjust the state's prison funding and capacity.